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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ILENE GREEN,

Plaintiff and Appellant,

v.

ANTHONY RAY NEGRETTE,

Defendant and Respondent.

G037852

(Super. Ct. No. 06V001889)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Reversed.

Law Offices of J. Jon Oh and J. John Oh for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Ilene Green appeals from a restraining order that enjoined her from contacting Anthony Ray Negrette. A separate restraining order, issued at the same time, enjoined Negrette from contacting Green. Green argues the restraining order against her is defective because the trial court failed to make fact findings required by statute before a mutual restraining order may be entered. We reverse because there is insufficient evidence to support the order against Green, without deciding whether the separate orders in this case are a mutual restraining order as that term is used in the statute in question.

* * *

In August 2006, Green filed a motion for a protective order under the Domestic Violence Protection Act. (Fam. Code, § 6200 et seq.)¹ In an accompanying declaration, Green said she was dating Negrette. Her main complaint was Negrette had been stealing from her, although there is also an allegation that Negrette hit Green in 2005.

Green declared that in early August 2006, Negrette broke into her car trunk and took the keys to her “laundry room coin boxes.” The incident left her “scared for my safety because Anthony keeps stealing from me.” In April 2006, Negrette was waiting in the parking lot when Green returned home one evening, and she alleged “he made me have sex with him for hours that night.”

In November 2005, Green said, Negrette took her car without permission and went to a casino. She called the police to report the car missing, then changed her mind and canceled the report. Negrette and the car were back in the morning, when Green found him asleep in her spare bedroom. And in April 2005, Green filed a police report after Negrette used her debit card to buy gasoline and tried to use it at a casino. She claimed the case “went to trial along with his probation violation.” A few days

¹ All statutory references are to the Family Code.

before trial, Negrette asked Green to drop the case or, alternatively, to say she had given him permission to use the card, but she refused.

Green also stated that “in 2005,” the couple had had an argument and Negrette hit and kicked her hard enough to leave bruises. Green’s declaration ends with this statement: “I live in fear and can’t enjoy a normal life knowing at any time he could break in and steal from me.”

In an opposing declaration, Negrette admitted to illegal conduct in the past without saying what it was: “With regard to the old accusations that occurred years ago . . . I’ve already done jail time and paid my debt to society and honestly do not see what it has to do with the recent events.”

Negrette said he had met Green several years earlier while doing some repair work at a rental property owned by her father. Green invited Negrette over for dinner, they began seeing each other, and a two-year relationship ensued. Negrette felt the relationship was “sex, nothing more, nothing less” and told Green so, but “Ilene had different ideas.” She told her friends they “were an item” and began keeping tabs on Negrette. Green gave Negrette a cell phone in her name to use, then called every incoming or outgoing number shown on the phone, telling whoever answered that Negrette was her boyfriend, and [somewhat incongruously] he was “a liar, a thief, drug addict and basically all in all a ‘bad person.’”

When Green discovered Negrette was seeing someone else, she told one of his friends she would “get even with [him] no matter the cost.” Among other things, Negrette said Green called the new girlfriend’s neighbors and harassed them, “trying to turn them against me in order to stop me from spending time at her house.” Negrette said Green offered one neighbor \$50 “to serve me,” and he feared the “trouble caused in my girlfriend’s complex could result in her eviction.” Reflecting on his troubles with Green, Negrette said “[a]pparently, I should be the one implementing a restraining order. She is the one who just won’t leave things alone and have us part our separate ways.”

At a hearing on Green's motion, both parties were present, but neither testified. The trial court said "given Mr. Negrette's claims, and I'll take his language in there as a request for a restraining order . . . the best and easiest thing I can do in this case [is] issue mutual restraining orders. [¶] . . . [¶] I would make a specific finding in these matters that they were stipulated restraining orders [¶] If you both agree to that, we're done."

Negrette agreed, but Green asked to make a comment. She said "my reason is that he's consistently stealing from me, and that he broke into my car, and that's the main reason I'm getting one on him." Green added that Negrette owed her a lot of money, and asked the trial court to order repayment, but the court declined to address the issue. A little later, Green said this: "I just don't understand because I'm not harassing him. I don't know why he's doing this to me."

The trial court said "based on the parties' agreement, the court will issue mutual restraining orders for a period of five years." Separate, formal restraining orders with identical terms were entered against each of the parties. The order against Green directed her not to "harass, attack, strike, threaten, assault . . . , hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements" of Negrette. She was ordered not contact him directly or indirectly, or "take any action, directly or through others, to get the addresses or locations of any protected persons or of their family members, caretakers, or guardians." Green was ordered to stay at least 100 yards away from Negrette, his home, job, or vehicle, prohibited from owning or possessing any firearms, and ordered to turn in to the police any in her possession or control. The order also gave Negrette the right to record any communications from Green that violated the order. An identical order was issued against Negrette.

On this record, the evidence is insufficient to support the restraining order against Green, quite apart from whether there was a mutual order that required specific fact findings.

A protective order may be issued to prevent “a recurrence of domestic violence” based on reasonable proof of “a past act or acts of abuse,” as shown in an affidavit by the moving party. (§ 6300.) Abuse means “intentionally or recklessly to cause or attempt to cause bodily injury,” a sexual assault, placing one in “reasonable apprehension of imminent seriously bodily injury” to the himself or another, or “any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203.)

Section 6320 provides as follows: “The court may issue an ex parte order enjoining a party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, telephoning . . . destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party”

A mutual restraining order is addressed in section 6305: “The court may not issue *a mutual order* enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.” (Italics added.) Where a mutual order is issued without any findings, it must be reversed. (*Monterroso v. Moran* (2006) 135 Cal.App.4th 732.)

The only case to consider the phrase “a mutual order” is *Conness v. Satram* (2004) 122 Cal.App.4th 197. There, two parties had been dating, and each obtained a restraining order against the other, but at separate hearings on separate days. The court held the later-issued order against Satram was not a “mutual order” under section 6305: “The plain language of the statute . . . seems to imply a single order that imposes parallel requirements on each party, not multiple orders.” (*Id.* at p. 202.) It went on to explain that the detailed findings prerequisite in section 6305 “helps ensure that a mutual order is the product of the careful evaluation of a thorough record and not simply the result of the moving party yielding to the other party’s importunities or the court deciding that a

mutual order is an expedient response to joint claims of abuse.” (*Id.* at p. 204.) Noting there was no suggestion that the order against Satram was issued out of convenience, and the trial court expressly found “restrainable abuse” by Satram, the court affirmed the order against her. (*Id.* at p. 205.)

It is an open question whether separate but identical restraining orders issued at the same hearing amount to a mutual order subject to section 6305. But it is a question we need not decide.

The record simply does not support the order against Green. To begin with, Negrette never moved for a restraining order. The closest he came was the equivocal statement in his answer that “I should be the one” asking for a restraining order. That statement is too vague to give Green notice that Negrette sought an injunction. And it certainly did not give Green notice that she was entitled to file an answer and she could dispute the charges at a hearing.

Moreover, Negrette never alleged abuse by Green that could support the order. He did not claim any physical injury, sexual assault, or threat of imminent bodily injury. (§ 6203.) Of the other acts that may be the basis for a restraining order, the closest would be harassing, telephoning, contacting, or coming within the proximity of the individual seeking the order. (§ 6320.) But Negrette did not say Green was harassing *him*, there was no complaint of unwanted calls or other contact *with him*, and Negrette did not say Green had accosted him at home, work, or anywhere else. Negrette did say Green had harassed his new girlfriend’s neighbors, and told various people he was a liar, thief, drug addict, and “bad person.” But this conduct was *not* prohibited by the restraining order, which does not restrain Green from contacting the girlfriend or any third parties.

The court almost resolved all this difficulty. It tried to get the parties to stipulate to a mutual order. But Green never acceded to the stipulation, and, even if she had, there remain the problems of sufficient evidence and findings to support a mutual

restraining order. Sympathetic as we are to the court's effort, it was never consummated. On this record, the trial court should not have issued the restraining order against Green.

Since there is insufficient evidence to support the restraining order against Ilene Green, the order is reversed. Green is entitled to costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.